

Q&S CONVEYANCING UPDATE

ISSUE 23, 11 MARCH 2009

SELLER BREAKING THREE-YEAR, FIXED-RATE MORTGAGE

(1) Topic Relevance

Real Estate Agents (and conveyancing lawyers for that matter) need to be aware of the background circumstances that affect buyers' and sellers' options.

(2) The Problem

We recently advised a client ("Jane") who has a property sale under unconditional contract and also a property purchase due to settle one month after the sale settlement.

In 2008 Jane had varied her home loan to a three-year, fixed-rate mortgage which expires in 2010. Jane's major concern is that her bank (mortgagee of the current property) intends to charge **over \$20,000.00 in break fees** when they release her mortgage upon sale. Jane asked us "Can they do that?".

(3) The Legal Answer

Some homeowners are aware of the potential costs of breaking a fixed-term mortgage. Others are not. In Jane's case her loan contract contained a clause stating that early payout of a fixed term contract would incur break fees calculated in accordance with a formula.

This Bank had not gone out of its way to draw this fact to Jane's attention when she altered her loan (however we note that some banks do go to the trouble of displaying this information more prominently, even providing a table of example break fees).

Nevertheless, the bank had met its legal obligations and Jane would have wasted a lot of time, money and stress fighting the matter. Even if Jane had an arguable point to dispute, time and money would have been against her.

(4) The Practical Solution/s

Fortunately for Jane, the same bank was willing to continue the three-year loan contract to her purchased property and avoid the break fees. Simultaneous settlements were not even required (money to be held by bank between settlements).

However, if Jane were not purchasing a new property on an acceptable timeframe, her options would appear to be limited to negotiating with the bank and insisting on a copy of the bank's calculations for checking.

Julian Creagh, Solicitor, Quinn & Scattini Lawyers

If you would like to ask any question about this or any other similar issue Julian may be contacted on 3221 1838 between 8.30am to 5pm Monday to Friday.

Quinn & Scattini Lawyers has offices in Brisbane, Beenleigh, Caboolture, Southport, Ipswich and Cleveland. In addition to residential and commercial Conveyancing services, our team of experienced lawyers practice in Business Law, Commercial Litigation, Property Law, Wills & Estates, Criminal Law and Family Law.



Offices at:

Brisbane
Level 28 Central Plaza One
345 Queen Street
Brisbane

Beenleigh
99 George Street
Beenleigh

Caboolture
9 Elliott Street
Corner Morayfield Road
Caboolture

Cleveland
141 Shore Street West
Cleveland

Gold Coast
64 Marine Parade
Southport

Ipswich
55 Limestone Street
Ipswich

Telephone
Freecall 1800 652 969

mail@quinnscattini.com.au
www.quinnscattini.com.au

